STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW

# NOTICE PUBLICATION/REGULATIONS SUBMISSION

EMERGENCY

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

| OAL FILE NUMBERS | NOTICE FILE NUMBER | REGULATORY ACTION NUMBER | EMERGENCY NUMBER |
|---|---|---|---|
| | Z- | | 2010-0506-02E |

For use by Office of Administrative Law (OAL) only

2010 MAY -6 AM 11:25

OFFICE OF ADMINISTRATIVE LAW

NOTICE | REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY: Food and Agriculture

AGENCY FILE NUMBER (If any): PH10032

## A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

| 1. SUBJECT OF NOTICE | TITLE(S) | FIRST SECTION AFFECTED | 2. REQUESTED PUBLICATION DATE |
|---|---|---|---|
| | | | |

| 3. NOTICE TYPE | 4. AGENCY CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) |
|---|---|---|---|
| ☐ Notice re Proposed Regulatory Action ☐ Other | | | |

| OAL USE ONLY | ACTION ON PROPOSED NOTICE | NOTICE REGISTER NUMBER | PUBLICATION DATE |
|---|---|---|---|
| | ☐ Approved as Submitted ☐ Approved as Modified ☐ Disapproved/ Withdrawn | | |

## B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S): Citrus Nursery Stock Pest Cleanliness Program, Citrus Tristeza I. Q.

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S):

2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) **(Including title 26, if toxics related)**

**SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)**

ADOPT: 3701, 3701.1, 3701.2, 3701.3, 3701.4, 3701.5, 3701.6, 3701.7 and 3701.8

AMEND: 3407(e )and (f)

TITLE(S): 3

REPEAL: 3000, 3001, 3002, 3003 and 3004

3. TYPE OF FILING

- ☐ Regular Rulemaking (Gov. Code §11346)
- ☐ Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)
- ☒ Emergency (Gov. Code, §11346.1(b))
- ☐ Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.
- ☐ Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)
- ☐ Emergency Readopt (Gov. Code, §11346.1(h))
- ☐ File & Print
- ☐ Other (Specify) _____
- ☐ Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
- ☐ Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

- ☐ Effective 30th day after filing with Secretary of State
- ☒ Effective on filing with Secretary of State
- ☐ §100 Changes Without Regulatory Effect
- ☐ Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

- ☐ Department of Finance (Form STD. 399) (SAM §6660)
- ☐ Fair Political Practices Commission
- ☐ State Fire Marshal
- ☐ Other (Specify) _____

| 7. CONTACT PERSON | TELEPHONE NUMBER | FAX NUMBER (Optional) | E-MAIL ADDRESS (Optional) |
|---|---|---|---|
| Susan McCarthy | (916) 654-1017 | (916) 654-1018 | smccarthy@cdfa.ca.gov |

8. **I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE: Nat Dechoretz

DATE: 4/23/10

TYPED NAME AND TITLE OF SIGNATORY: Nathan Dechoretz, Deputy Secretary for Administration and Finance

For use by Office of Administrative Law (OAL) only

**3701 Definitions**

(a) "Applicant" means any person whose application has been submitted to but not yet accepted by the Department.

(b) "Authorized agent" means any person who has been granted authority by the Department to test plant and/or insect samples for the purposes of these regulations.

(c) "Breach" means any opening of any size inadvertently made in an insect-resistant structure.

(d)"Citrus" means "citrous" and any plants of the genera Citrus, Fortunella, Poncirus, and all hybrids having one or more of such as parents that could host any disease for which testing is required in Section 3701.6.

(e) "Citrus Clonal Protection Program" (CCPP) means the University of California at Riverside, Department of Plant Pathology & Microbiology/California Department of Food and Agriculture/U. S. Department of Agriculture/California Citrus Nursery Board/Citrus Research Board cooperative program.

(f) "Citrus Clonal Protection Program" or CCPP tag number means the unique identifying number assigned by CCPP to a tree.

(g) "Citrus tree" means a rooted citrus plant.

(h) "Department" means the California Department of Food and Agriculture.

(i) "Department tag number" means the unique identifying number assigned by the Department to each registered scion mother or seed tree.

(j) "Foundation stock" means propagative materials collected or taken from trees maintained by the CCPP.

(k) "Infected" means that the presence of a pathogen listed in these regulations was detected using the testing methods specified in Section 3701.6.

(l) "Official sample" means a sample collected by the Department.

(m) "Participant" means any person who agrees to fulfill the responsibilities of the participant described in Section 3701.2, who has submitted an application to the Department and whose application has been accepted by the Department.

(n) "Propagative materials" means seeds, cuttings, buds, budsticks, graft sticks or tissue cultured materials taken from a citrus tree.

(o) "Registered" means the Department has approved a citrus tree or propagative

material that has been propagated, planted, inspected, tested, and documented in accordance with the provisions of these regulations.

(p) "Registered increase tree" means a citrus tree, propagated using propagative materials from CCPP or a registered mother tree, for the purpose of rapidly producing budwood, and that the Department has determined to be in compliance with the inspection, testing and other requirements specified in these regulations.

(q) "Registered increase tree lot" means a contiguous group of increase trees propagated using the same propagative sources.

(r) "Registered scion mother tree" means a citrus tree, used as a source of vegetative propagating material, that the Department has determined to be in compliance with the inspection, testing and other requirements specified in these regulations and to which the Department has attached a tag bearing that tree's departmentally assigned registration number.

(s) "Registered seed tree" means a citrus tree, used as a source of seed only, that the Department has determined to be in compliance with the inspection, testing and other requirements specified in these regulations and to which the Department has attached a tag bearing that tree's departmentally assigned registration number.

(t) "Scion tree" means a citrus tree that is used as a source of vegetative propagating material.

(u) "Tested" means any test procedure using plant material or its extracts to determine the presence or absence of a disease or disease agent in or on the tested plant material. For the purposes of these regulations, testing will be in accordance with the procedures adopted by the Department for diseases and disease agents listed in Section 3701.6.

(v) "Topworking" means budding or grafting of another variety on top of existing stock.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940 and 6941, Food and Agricultural Code.

**3701.1 General Provisions**

(a) Participation in and compliance with the requirements of these regulations is

mandatory for any person, with the exception of the Citrus Clonal Protection Program, who by any method of propagation, produces any citrus nursery stock propagative material.

(b) Citrus propagative material not produced in accordance with the provisions of these regulations may be subject to immediate destruction.

(c) The participant shall annually sign and file a California Nursery Stock Registration and/or Certification Program Agreement, provided by the Department, acknowledging the responsibilities of participation in this program according to Title 3, Division 4, Section 3069, California Code of Regulations.

(d) Approvals, supervision, inspections, tests, determinations, registration and certification shall be conducted by the Department or its authorized agents.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**Section 3701.2 Program Responsibilities.**

(a) Responsibilities of the Participant

(1) Paying all fees as described in Section 3701.8.

(2) Providing the labor to collect samples for testing under the supervision of the Department.

(3) Submission of a completed, signed compliance agreement as required in Section 3701.4.

(4) Applying for the registration or re-registration of plants grown under the provisions of these regulations.

(5) Selecting tree(s) for testing and the proper maintenance of any plants being grown under the provisions of these regulations.

(6) Procuring qualified propagative materials for planting.

(7) Using propagation, farming, and sanitation practices as required in Section 3701.4.

(8) Prompt removal of citrus trees from insect-resistant structures when no longer eligible to be in the program.

(9) Maintain, and upon request, provide within five working days to the

Department a record of all scion mother, seed and/or increase trees registered by the participant.

(A) For all registered scion mother, seed and increase trees the records shall include the sources(s) of the propagative materials used to produce the registered trees and shall be maintained for a minimum of five years from date of propagation.

(B) For all citrus propagative material produced from registered scion mother or seed trees, the records shall include date harvested, disposition of such material including location in the nursery or name and address of customer as applicable, Department tag number, number and kind of units of propagative material, plant type and variety.

(C) For all citrus propagative material produced from registered increase trees within 36 months from date of propagation of the increase tree lot, the records shall include date harvested, disposition of such material including location in the nursery or name and address of customer as applicable, tag number of registered scion mother or seed tree or CCPP tag number, number and kind of units of propagative material, plant type and variety.

(D) For all citrus propagative material produced from registered increase trees after 36 months from date of propagation of the increase tree lot, the records shall include date harvested, disposition of such material including location in the nursery or name and address of customer as applicable, tag number of registered scion mother or seed tree, increase tree lot number, number and kind of units of propagative material identified by tag number and increase lot number, plant type and variety.

(10) Taking precautions to guard against the introduction and spread of pests and diseases to plants entered in this program.

(11) Proper use of registration tags provided by the Department, including removal within five working days, of registration tags from citrus trees that have died, become diseased, for which the Department issues a cancellation of registration notice, or that otherwise are no longer eligible for registration, maintaining control of tags issued to

the participant, and ensuring that tags are not applied to plants or propagative materials that are not eligible.

(12) Proper use, maintenance and submission of Department-supplied insect monitoring traps.

(13) Notifying the Department by fax or email within 24 hours of discovery of a breach in an insect resistant structure. The notification shall include at least the following: the size of the breach, time of day breach occurred (if known), estimated length of duration of the breach and the participant's response to the breach.

(14) Notifying the Department at least 24 hours in advance of any pest control treatments in plantings using a pesticide that has reentry or worker safety requirements that would create a health hazard for the Department's employees, or in any manner interfere with the Department's ability to conduct scheduled inspections or other field activities. This subsection only applies when the Department has notified the participant of the date of a planned inspection or other program-related action that would bring the Department's representative(s) into a treated area or into contact with treated plants.

(15) Notifying the Department of any trees for which registration is requested that are known to be infected with the citrus variant of the HSVd, citrus viroid IIa (CVd-IIa, Non-cachexia variant).

(16) Meeting the requirements of Title 3, Division 4, California Code of Regulations, Section 3060.4(a )(1)(D) when selling any propagative material infected with the citrus variant of the HSVd, citrus viroid IIa (CVd-IIa, Non-cachexia variant).

(b) Responsibilities of the Department.

(1) Maintain records of all registered scion mother and seed trees, and increase tree lots that are to be used as propagative sources after 36 months from date of initial propagation in the increase lot.

(2) Specify, in the registration record, those trees that are infected with the citrus variant of the HSVd, citrus viroid IIa (CVd-IIa, Non-cachexia variant).

(3) Process applications from applicant and/or requests for records from applicant within 30 days of receipt.

(4) Approve insect resistant structures.

(5) Inspect and test participants' citrus trees in accordance with the provisions of these regulations and as required by the Department.

(6) Cancel registration of citrus trees that are found to be infected with diseases listed in Section 3700.6, using tests prescribed in Section 3700.6, or are highly likely to be infected because the source tree tested positive for disease using tests prescribed in Section 3700.6 or the Department determines the tree to be off-type, and/or the trees have been produced out of compliance with the provisions of these regulations.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**Section 3701.3 Eligibility Requirements**

(a) Registered scion mother trees and registered seed trees.

(1) Citrus trees registered under Title 3, Division 4, Chapter 3, subchapter 2, Article 1 before the effective date of these regulations may maintain their registration until they are due to be retested; and be continuously re-registered as long as they meet the testing requirements of Section 3701.6.

(2) Other than as described in 3701.3(a)(1), scion mother trees and seed trees for which registration is requested shall have been propagated using scion materials obtained from or tested by CCPP in accordance with Table 1, or from registered sources that were tested by CCPP or whose origin can be traced to CCPP; and rootstock shall be from registered seed sources or propagated vegetatively from registered sources.

(3) Registered scion mother trees may be topworked and thereafter re-registered, provided that the topworking was performed using only registered materials.

(4) Registered scion mother trees infected with the citrus variant of the HSVd, citrus viroid IIa (CVd-IIa, Non-cachexia variant), that otherwise meet the testing requirements of Section 3701.6 may be registered.

(b) Registered increase trees

(1) Propagative materials used in the production of increase trees shall be foundation or registered scion mother or registered seed tree stock.

(2) Registered scion mother or increase trees may be topworked using registered materials to establish a registered increase tree.

(3) Until January 1, 2013, registered field-grown increase trees may be used as a source of propagative materials for a period of 18 months, beginning with the date the first tree in the increase lot is propagated, with no additional testing.

(4) Registered increase trees, maintained in departmentally approved insect resistant structures that meet the requirements of Section 3701.5, may be used as a source of propagative materials for a period of 36 months, beginning with the date the first tree in the increase lot is propagated, with no additional testing. The cutting period may be extended for an additional 24 months provided that the testing requirements of Section 3701.6 are met.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**Section 3701.4 Planting Location and Maintenance Requirements**

(a) Registered trees shall be located as follows:

(1) Scion mother trees may be field grown until January 1, 2012. To be eligible for registration after January 1, 2012, scion mother trees shall be maintained in departmentally approved insect resistant structures that meet the requirements of Section 3701.5.

(2) Seed trees may be field grown until January 1, 2013. To be eligible for registration after January 1, 2013, seed trees shall be maintained in departmentally approved insect resistant structures that meet the requirements of Section 3701.5.

(3) Increase trees may be field grown until January 1, 2013. To be eligible for registration after January 1, 2013, increase trees shall be maintained in departmentally approved insect resistant structures that meet the requirements of Section 3701.5.

(b) Maintenance Requirements

(1) All plants entered in this program shall be kept in good growing condition and pests shall be kept under effective control.

(2) To be eligible for planting inside a departmentally approved insect resistant structure, scion mother and increase trees must meet either the registration requirements of these regulations or Section 3701.6(d)(1)(B)(1); and seed trees must meet the testing requirements for registered scion mother trees.

(3) Each participant maintaining an insect resistant structure shall sign a compliance agreement with the Department that includes a plan developed by the participant and approved by the Department for meeting the following performance standard:

(A) Ensure proper utilization of double door entries, including positive air flow.

(B) Establish procedures that are sufficient to prevent entry of disease and/or vectors of concern while introducing/removing material into/from insect resistant structure.

(C) Maintain structural inspection schedule that is sufficient to ensure the integrity of the structure is maintained.

(D) Implement plan for response to structural breach.

(E) Ensure nursery personnel are trained in pest identification and plant inspection techniques.

(F) Ensure proper use of Department supplied traps.

(G) Implement plan for major structure maintenance or replacement.

(H) Provide Department access to insect-resistant structure anytime during regular business hours, upon receiving prior notice.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**3701.5 Insect-Resistant Structures Performance Standard.**

(a) Each insect resistant structure shall be approved by the Department prior to planting or moving stock into it. Structures under construction or completed prior to the adoption of these regulations may be grandfathered in provided they meet the performance standards outlined below.

(b) All propagation structures shall be enclosed with a covering to exclude vectors of citrus diseases. All structures shall meet the following performance standards at all times.

(1) Insect resistant structures shall have double entryways that incorporate the use of positive air flow to the outside environment.

(2) An enclosed vestibule shall be incorporated into the design to provide for the

ingress and egress of nursery stock, equipment and supplies.

(3) Insect exclusion screen or non-permeable covering shall cover the entire structure with no gaps that would allow vectors of citrus diseases through.

(4) Screen size shall be sufficient to exclude the cotton aphid.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**3701.6 Inspection and Testing Procedures**

(a) Except as otherwise provided, inspection and testing activities described in this section shall be made by the Department, or its authorized agents which, for the purposes of testing, include the Citrus Clonal Protection Program, the Central California Tristeza Eradication Agency and the Citrus Research Board. Official samples submitted to a United States Department of Agriculture facility that is accredited to perform specific test(s) may be eligible to fulfill those specific testing requirements of this program. All inspection and testing procedures shall be conducted at times determined suitable by the Department.

(b) Upon submittal of laboratory protocols, and Department review and acceptance thereof, agents may be granted authorization for performing any of the specific laboratory tests required by these regulations. Any change(s) in protocol(s) must be submitted to the Department for review and acceptance prior to their use in this program.

(c) The diseases and associated disease agents of concern to this program and approved test methods are listed below in Table I. Additional inspections and tests other than provided in this section may be required by the Department.

Table I: Diseases, Disease Agents of Concern and Approved Test Methods/Indicators

| **Diseases of Concern** | **Disease Agent(s)** | **Test/Indicator Plant** |
|---|---|---|
| | **Viruses** | |
| Infectious Variegation, Leaf rugose, Crinkly leaf | *Citrus variegation ilarvirus*<br>*Citrus leaf rugose ilarvirus*<br>*Citrus crinkly leaf ilarvirus* | Sour orange<br>Etrog Citron |
| Leaf blotch<br>Dweet mottle | *Citrus leaf blotch virus* (CLBV) aka<br>*Dweet mottle virus* (DMV) | Dweet tangor |
| Leprosis | *Citrus leprosis rhabdovirus* | Sweet orange |
| Psorosis A & B (Ring spot) | *Citrus psorosis ophiovirus* (CPsV) | Sweet orange<br>Dweet tangor |
| Satsuma Dwarf | *Satsuma dwarf virus* (SDV) group | Satsuma mandarin, Dweet tangor, White sesame (*Sesamum indicum*), ELISA |
| Tatter leaf-Citrange stunt | *Apple stem grooving capillovirus* (ASGV) aka Citrus tatter leaf virus (CTLV) | Rusk citrange/RL Citrus excelsa |
| Tristeza (Quick decline, Stem pitting, Seedling yellows) | *Citrus tristeza closterovirus* (CTV) | Mexican lime, ELISA, Immunoimpression Direct tissue-blot immunoassay |
| Yellow mosaic | *Citrus yellow mosaic badnavirus* | Sweet orange, pummelo, ELISA |
| | **Viroids** | |
| Various citrus growth abnormalities and symptomatologies related to citrus viroids including exocortis and cachexia | *Citrus exocortis viroid* (CEVd),<br>*Hop stunt viroid* (HSVd),<br>Citrus variants of HSVd,<br>*Citrus viroid-IIa* (CVd-IIa): Non-cachexia, CVd-IIIb & -IIc: Cachexia,<br>*Citrus bent leaf viroid* (CBLVD) aka *CVd-I,*<br>*Citrus dwarfing viroid* (CDVd) aka CVd-III,<br>*Citrus bark cracking viroid* (CBCVd) aka CVd-IV,<br>*Citrus viroid V* (CVd-V),<br>*Citrus viroid VI* (CVd-VI) aka CVD-OS | Etrog citron<br>Arizona 861-S1/RL<br><br>and<br><br>sPAGE,Imprint Hybridization |
| | **Procaryotes** | |
| Citrus variegated chlorosis | *Xylella fastidiosa* | PCR and sequencing |

| | | |
|---|---|---|
| Huanglongbing (Citrus greening) | *Candidatus* Liberobacter sp. | Sweet orange PCR Source plant observation |
| Stubborn | *Spiroplasma citri* | Culture Sweet orange |
| Witches' broom | *Candidatus* Phytoplasma aurantifolia | Mexican lime, PCR |
| **Unknown** | | |
| Australian Dieback | Uncharacterized, probable phytoplasma | Sweet orange, grapefruit |
| Concave gum | Unknown | Dweet tangor Sweet orange |
| Chlorotic dwarf | Unknown | Sour orange, rough lemon |
| Cristacortis Impietratura | Unknown | Dweet tangor Sweet orange |
| Vein enation | Unknown, probably Luteovirus | Mexican lime Sour orange |
| Impietratura | Unknown | Dweet tangor, Sweet orange |

(d) Testing. Tests shall be conducted as described in Table 1 unless the Department approves or requires changes.

(1) Scion mother trees shall be tested as follows:

(A) Field-grown registered scion mother trees shall be tested by the Department annually for tristeza and Huanglongbing, at least once every three years for viroids and at least once every six years for psorosis.

(B) Registered scion mother trees, maintained in a departmentally approved insect resistant structure meeting the requirements of Section 3701.5, whose scion parent material was sourced directly from CCPP and not subsequently field planted shall be tested as follows:

(i) Prior to their first use as a vegetative propagative source or at three years from date of propagation, the trees shall be tested for tristeza, Huanglongbing and viroids.

(ii) Thereafter, the trees shall be tested annually for tristeza and Huanglongbing, at least once every three years for viroids and at least once every six years for psorosis.

(C) Registered scion mother trees, previously field grown but currently maintained in a departmentally approved insect resistant structure meeting the requirements of Section 3701.5, or whose scion parent material was field grown prior to placement in the insect resistant structure shall be tested annually for tristeza and Huanglongbing, at least once every three years for viroids and at least once every six years for psorosis.

(D) Scion trees found to be infected with the citrus variant of the HSVd, citrus viroid IIa (CVd-IIa, Non-cachexia variant) shall be tested to assure the sequence similarity of the detected CVd-IIa with the Department approved growth modifying Tsn-RNA IIa.

(2) Seed trees shall be tested as follows:

(A) Field-grown registered seed trees shall be tested annually for Huanglongbing and at least every six years for psorosis A & B and citrus leaf blotch virus.

(B) Registered seed trees maintained in a separate departmentally approved insect resistant structure meeting the requirements of Section 3701.5 from scion source trees shall be tested annually for Huanglong and at least every six years for psorosis A & B and citrus leaf blotch virus.

(C) Registered seed trees maintained in a departmentally approved insect resistant structure meeting the requirements of Section 3701.5 that also contains scion source trees shall be tested annually for tristeza and Huanglongbing, at least once every three years for viroids and at least once every six years for psorosis A & B and citrus leaf blotch virus.

(3) Increase tree(s) that are to be used as a propagative source after 36 months from date of initial propagation in the increase lot shall have been tested within the previous 12 months for tristeza and Huanglongbing. Increase tree lots testing negative for these diseases shall be assigned a lot number by the Department. Increase tree lots shall be sampled based on the following schedule:

| Number of trees in lot | Number of plants to sample |
|---|---|
| 1 – 100 | 95 |
| 101 – 200 | 155 |

| | |
|---|---|
| 201 – 300 | 189 |
| 301 – 400 | 211 |
| 401 – 500 | 225 |
| 501 – 600 | 235 |
| 601 – 700 | 243 |
| 701 – 800 | 249 |
| 801 – 900 | 254 |
| 901 – 1000 | 258 |
| 1001 – 2000 | 277 |
| 2001 – 3000 | 284 |

(e) The Department may approve or require the substitution or addition of other tests, under generally accepted standards of scientific analysis, which are of equal or better reliability in detecting the diseases and disease agents of concern in this section.

(f) The Department shall publish a notice of approval of any test method which is substituted for or in addition to those listed in this section on the Department's web site.

(g) Inspection. The Department may perform unannounced inspections of structures and/or plants entered in the program at any time during normal business hours. In addition, each participant nursery shall be subject to an annual inspection of the following:

(1) All required records pertaining to trees entered in the program.

(2) All insect-resistant structures maintained as part of the program.

(3) The participant's compliance agreement for insect-resistant structures.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941, 6943 and 6945, Food and Agricultural Code.

**3701.7 Refusal, Suspension or Cancellation of Registration**

(a) Registration may be suspended for any registered tree(s) if any of the conditions listed below apply.

(1) Preliminary tests or visual inspections indicate that the citrus tree(s), or any citrus tree(s) within the same structure, are infected with the applicable disease or disease agent of concern listed in Section 3701.6; or

(2) The requirements of these regulations have not been met; or

(3) The pest cleanliness requirements for nursery stock in Title 3, Division 4, Section 3060.2 of California Code of Regulations have not been met; or

(4) The source that the citrus trees were propagated from is diseased and the citrus trees and their progeny are also suspected of being diseased.

(5) Participant's failure to meet the requirements in the compliance agreement.

(6) Failure of the integrity of an insect-resistant structure.

(b) Registration may be canceled or refused for any registered tree(s) if any of the conditions listed below apply.

(1) The citrus tree(s), or any citrus tree(s) within the same structure, are infected with an applicable disease or disease agent of concern listed in Section 3701.6 and detected using a test listed in that section.

(2) The requirements of these regulations have not been met; or

(3) The pest cleanliness requirements for nursery stock in Title 3, Division 4, Section 3060.2 of California Code of Regulations have not bee met; or

(4) The source that the citrus trees were propagated from is diseased and their progeny are also determined to be diseased.

(5) Participant's failure to meet the requirements in the compliance agreement.

(6) Failure of the integrity of an insect-resistant structure.

(c) Disposition of suspended and canceled trees.

(1) Suspended trees may be retained in the planting.

(2) Suspended trees shall be clearly identified and written records maintained.

(3) Propagative materials from suspended trees may, at the discretion of the Department, retain their registered status while testing to determine their disease status is in progress.

(4) Propagative materials from canceled trees shall not be used.

(5) Trees maintained in insect resistant structures, for which registration has been cancelled but which have not tested positive for the diseases listed in Section 3701.6(d),

shall be removed by the participant within one month of being notified of the cancellation by the Department.

(6) Trees maintained in insect resistant structures which have tested positive for any of the diseases listed in Section 3701.6(d) shall be removed by the participant within 48 hours of being notified by the Department, unless granted an extension by the Department.

(d) Reinstatement of suspended trees.

(1) Registration of suspended trees and/or propagative materials may be reinstated if the Department determines that the suspension is no longer necessary. The Department may use testing and/or inspections to make this determination.

(2) Registered trees may have their registration reinstated if they test negative for disease(s) shown to be infecting the source(s) from which they were propagated.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6941 and 6945, Food and Agricultural Code.

**3701.8 Application and Fees**

(a) Application to register citrus trees may be made after the trees have been planted. Upon submitting an application the applicant shall consent to the taking of samples or plants from any planting by the Department for inspection or testing purposes. Application(s) shall be submitted as follows:

(1) For scion mother or seed tree(s), the participant shall submit an application for the initial registration and each year thereafter to request continued registration.

(2) For increase tree lot(s) that are to be used as a source of propagative materials beyond 36 months from date of propagation, the participant shall submit an application for each year the period is extended.

(3) The applicant shall submit an application on a form provided by the Department and provide the following information:

(A) Applicant's name and mailing address;

(B) Applicant's telephone and fax numbers, email address;

(C) Applicant's California Nursery Stock License Number;

(D) County where applicant is located;

(E) Type of planting:

(i) Field, including number of trees

(ii) Insect resistant structure, including Department-assigned insect-resistant structure number and number of trees per structure.

(F) Location of planting, including county

(G) Signature and title of applicant; and

(H) Date application signed.

(b) Fees. Fees are to be used to reimburse the Department for the costs of administering the program, including defraying expenses incurred in the approval, inspection, testing, approval, and registration procedures herein provided and are not to obtain any right or privilege. Fees, in whole or in part, may be waived if the cost of the services rendered is covered by assessment.

(1) Application fees shall be paid by the participant in advance of any work conducted.

(2) The Department may charge additional fees because of conditions or total acreage entered or number of tests performed when established minimum fees will not cover the cost of services.

(3) Fees paid for services that are not rendered shall be refunded to the participant. The amounts refunded may be prorated based on the direct costs incurred by the Department in the administration of the requirements of these regulations.

(4) The fee schedule shall be:

(A) For scion mother and seed tree registration, the annual application fee shall be $200 plus:

(i) $35 per tree for first 100 scion mother or seed trees, or

(ii) $3,500 plus $30 per tree beginning with the 101st scion mother or seed tree for 101-300 trees, or

(iii) $9,500 plus $25 per tree beginning with the 301st scion mother or seed tree for more than 300 trees.

(B) For registered increase tree lots to be used as propagative sources past 36 months from date of propagation, an annual application fee of $50 per increase tree lot.

(C) For insect-resistant structures, an annual program fee of $300 for all structures at one location, plus $.01/square foot.

(D) In addition to the above fees, an additional fee will be assessed equal to the amount charged by the laboratory selected by the Department to do the analyses.

Note: Authority: Sections 407 and 6946, Food and Agricultural Code.

Reference: Sections 407, 6940, 6944 and 6945, Food and Agricultural Code.

Section 3407. Citrus Tristeza Virus Interior Quarantine.

A quarantine is established against the following pest, its hosts and possible carriers:

(a) Pest. All strains of the citrus tristeza virus.

(b) Quarantine Area. That portion of the State which is known to be generally infected with citrus tristeza virus and where no significant efforts to control or suppress the disease are conducted. The quarantine area is the counties of Orange and Ventura, and portions of Los Angeles, Riverside, San Bernardino, San Diego and Santa Barbara counties as follows: (continued)

(c) Suppressive Area. The suppressive area is that portion of the State in which the citrus tristeza virus has been detected, in which a pest control district has been established, and where an active control or suppression program is being conducted. The suppressive area is the county of Kern and portions of Fresno, Tulare, and Riverside Counties as follows: (continued)

(d) Regulated Area. The regulated area is that portion of the State in which the citrus tristeza virus may occur but which is not generally infected and where efforts to control or suppress the disease may be conducted. The regulated area is all areas of California not described as a quarantine or suppressive area.

(e) Articles and Commodities Covered.

(1) All plants, except propagative parts, ~~and propagative parts (except seed),~~ including any subspecies, variety, or ornamental form, of the genera Citrus (true citrus), Fortunella (kumquat), Poncirus (trifoliate orange).

(2) All plants and propagative parts (except seed), including any subspecies variety or ornamental form of the genera~~,~~ Aeglopsis (dwarf powder-flask fruit), and Afraegle (African powder-flask fruit), Atalantia, Citropsis, Clausena, Clymenia, Eremocitrus, Hesperethusa, Merrillia, Microcitrus, Pleiospermium, Severinia, Swinglea, and of any hybrid having at least one ancestor of Citrus, Fortunella, or Poncirus, are declared to be hosts or possible carriers of the pest.

(f) Restrictions.

(1) Moving permits for articles and commodities covered in (e)(1).

(A) The agricultural commissioner at origin may issue permits authorizing the movement of propagative parts from field-grown source trees until January 1, 2012 and from field-grown nursery increase blocks until January 1, 2013.

(B) Propagative parts from registered source or registered increase trees that are maintained in departmentally approved insect-resistant structures and that meet the record-keeping requirements in Section 3701.2 (a)(9), Title 3, California Code of Regulations may be moved within the state without a moving permit.

(~~1~~2) Conditions of Movement. Unless accompanied by a moving permit or under a cutting permit as hereinafter provided, articles and commodities covered shall not be transported or moved, except as provided in subsection (f)(1)(B):

(A) From the quarantine area except to another portion of the quarantine area or except when authorized under permit as provided in paragraphs (7) and (8).

(B) From the regulated area except to another portion of the regulated area or to the quarantine area or under permit to the suppressive area as provided in paragraph (3).

(C) From the suppressive area except to the quarantine area, to another portion of the suppressive area under permit as provided in paragraphs (~~3~~4) and (~~5~~6), or under permit to the regulated area as provided in paragraph (~~3~~4).

(~~2~~3) Propagation of Articles and Commodities Covered in this Section. All buds, cuttings, and scions used in the propagation of trees described in subsection (e)(2) shall be taken from source trees which have been tested to the satisfaction of the department and found free from tristeza. No buds, cuttings, or scions from untested or tristeza infected source trees may be used for propagation of articles and commodities covered in this section. Records shall be maintained of each source tree, the quantity of propagative material taken from each source tree, and the progeny trees in the nursery produced therefrom for five years after production. The records shall be made available for review by the county agricultural commissioner during normal business hours.

(~~3~~4) Moving Permits for Movement into, within, or from the Suppressive Area. Except as provided in subsection (f)(1)(B) , ~~The~~ the agricultural commissioner at origin may issue moving permits authorizing movement of articles and commodities covered

into, within, or from the suppressive area provided that the articles and commodities have been tested for tristeza to the satisfaction of the department and no evidence of tristeza was found, or all buds, cuttings, scions or top-worked trees used in the production of the trees, or being moved as such are from source trees or trees in a nursery increase block which have been so tested.

(45) Record of Tested Source Trees and Trees Produced From Nursery Increase Blocks. In order that trees produced from buds, cuttings, or scions taken from tristeza tested source trees or nursery increase blocks may later be moved under a moving permit in accordance with paragraph (34), the agricultural commissioner shall cause a record to be kept of each source tree listed in subsection (e)(2); the kind and amount of buds, cuttings, or scions taken from each source tree; and the kind, number, and location in the nursery of the progeny trees produced therefrom for five years after production.

(56) Cutting Permit Required for Taking or Moving Budwood Within the Suppressive Area. No buds, cuttings, or scions of host trees described in subsection (e)(2) shall be cut or otherwise taken from such trees within the suppressive area or moved within or from any such area for propagation, unless a cutting permit has been secured from the agricultural commissioner prior to cutting or taking or moving same. Cutting permits may be issued within the suppressive area provided the source tree has been tested for tristeza to the satisfaction of the department and no evidence of tristeza was found. Such a cutting permit shall set forth the amount and kind of buds, cuttings, and scions in the shipment accompanied thereby and the name and address of the consignee.

(67) The issuance of cutting permits for host trees listed in subsection (e)(2) and moving permits, except as provided in subsection (f)(1)(B), under the terms of this regulation also applies to nursery increase blocks. Nursery increase block means a planting of citrus nursery stock propagated using budwood and/or scionwood from trees which have been tested for tristeza to the satisfaction of the department. Top-worked trees may qualify as nursery increase blocks provided that they are tested to the satisfaction of the department and found free of tristeza. The county agricultural commissioner at origin may approve such nursery or top-worked trees, which do not exceed 18 months from time of budding, to be used as a supplementary source of buds,

cuttings or scions. The agricultural commissioner shall cause a record to be kept as provided in paragraph (45).

(78) Permits Involving Movement into or through the Regulated Area for Fumigation. Except as provided in subsection (f)(1)(B), tThe agricultural commissioner may issue permits authorizing the movement of articles and commodities covered from the quarantine area into or through the regulated area for fumigation and prompt return to the quarantine area. The articles and commodities shall be treated for tristeza vector elimination immediately prior to such movement in a manner approved by the department and shall be moved in wrapped bales, bundles, or closed containers in a closed conveyance. Such permits shall be valid for only the time specified in the permit and shall not authorize the articles and commodities to remain outside the quarantine area longer than 48 hours.

(89) Movement in Transit through the Quarantine Area. Articles and commodities covered originating outside of the quarantine area may be moved through such area without delay or diversion in wrapped bales, bundles, or closed containers, or in a closed conveyance into which no other articles and commodities covered are placed while within the quarantine area.

Note: Authority cited: Sections 407, 5301, 5302 and 5322, Food and Agricultural Code. Reference: Sections 5301, 5302 and 5322, Food and Agricultural Code.

~~Section 3000. Disclaimer of Warranties and Financial Responsibility.~~

~~The provisions of Section 3069 shall apply to this article.~~

~~Note: Authority cited: Sections 407 and 5823, Food and Agricultural Code.~~
~~Reference: Sections 5821 and 5822, Food and Agricultural Code.~~

~~Section 3001. Definitions.~~

~~(a) "Virus-infected" means infected by any of the virus or virus-like diseases listed in this article.~~

~~(b) "Index" means testing a plant for infection of a specific virus disease by grafting with tissue from it to an indicator plant or by other means approved by the director. Information regarding such other means may be obtained from the Department's Pest Exclusion Unit.~~

~~(c) "Virus-tested" means tested for specific virus or virus-like diseases listed in this article using procedures as outlined in this article.~~

~~(d) "Off-type" means different from the variety for which registration or certification had been applied.~~

~~(e) "Selected tree" means a seed or scion tree for which registration is requested.~~

~~(f) "Registered" means a registration number has been assigned by the Department to a seed or scion tree that has been inspected and tested in accordance with the provisions of this article to serve as a source of propagating material for certified nursery stock.~~

~~(g) "Foundation block" means an outdoor planting of citrus trees, maintained by the University of California, in which trees may be registered to serve as a primary source of propagating material.~~

~~(h) "Protected foundation block" means an indoor planting, maintained by state or federal agencies, in which trees may be registered to serve as a primary source of propagating material.~~

~~(i) "Nursery increase block" means a planting of citrus nursery stock, propagated directly from registered trees.~~

~~(j) "Certified block" means a planting of citrus nursery stock for the production of certified nursery stock.~~

(k) "Foundation stock" means propagating material produced from a registered tree in any foundation block or from properly indexed material propagated and grown in an approved state, federal, or university glasshouse or screenhouse.

(l "Registered stock" means propagating material from a registered tree.

(m) "Registered increase stock" means propagating material from a nursery increase block.

(n) "Certified citrus nursery stock" means trees propagated by using scions from registered stock, and certified in accordance with the provisions of this article.

Note: Authority cited: Sections 407 and 5823, Food and Agricultural Code. Reference: Sections 5821 and 5822, Food and Agricultural Code.

Section 3002. General Provisions.

Participation in this program is voluntary and may be withdrawn at the option of the applicant. Except as otherwise specified, certification, registration, approvals, determinations, inspections, index tests and supervision shall be conducted by the Department.

(a) Except as otherwise provided, certification is based solely on visual inspections of sample plants from each variety in a planting which are found not to exceed the percentages stated in Section 3003(g)(7).

(b) Responsibility of Applicant: The applicant shall be responsible for the:

(1) Selection of the tree for testing.

(2) Selection of the location and of the proper maintenance of any plants being grown under the provisions of this article.

(3) Application for the registry or re-registry of plants being grown under the provisions of this article.

(4) Maintaining the identity of all plants entered in this program.

(5) Farming and sanitation practices.

(6) Notifying the Department of the date and material of all pest control treatments applied in the plantings for which inspections must be made.

(7) Notifying the Department at least one week in advance of the harvesting as to when it will commence.

~~(8) Placing the information required on each certification tag furnished by the Department including the participant's name and the block number.~~

~~(c) Location of Plantings: Each planting location shall be subject to approval and shall be in an area having minimal risks for spread of infectious pests by drainage, flooding, irrigation, or by other means.~~

~~A nursery increase block and certified block shall be located not less than 50 feet distant from any established citrus tree. Each nursery increase block and certified block shall be a separate planting sufficiently apart from any other planting to maintain its identity.~~

~~Selected seed or scion trees for registration may be selected from any location with the approval of the Department.~~

~~(d) Maintenance of Plants: All plants entered in this program shall be kept in a thrifty growing condition and pests shall be effectively controlled. Suitable precautions shall be taken in cultivation, irrigation, movement and use of equipment, and in other farming and nursery practices to guard against spread of pests to plants entered in this program.~~

~~To assure that inspections may be made properly and to provide close working knowledge of field operations, the applicant shall notify the Department in advance of any planting, propagating or pruning operation or removal of nursery stock or trees in any planting entered in this program.~~

~~All pruning shears, saws or other implements shall be disinfected in an approved manner prior to any fruit picking or cutting of any selected or registered tree, or any clonal selection within an increase block or certified block.~~

~~Any plant found to be off-type, showing symptoms characteristic of stubborn disease, or infected with a virus, may be required to be removed immediately from any planting. Approval may be given to remove off-type parts of a registered tree without revoking registration of the tree.~~

~~Labeling of each selected or registered tree and of nursery stock growing in plantings entered in the program to identify it as to rootstock and as to its scion source shall be done in an approved manner.~~

~~(e) Eligibility and Planting Requirements:~~

~~(1) Rootstock Propagation: The rootstock of any plant entered in the program may be grown from registered seed or it may be vegetatively propagated providing the propagating wood meets the same requirements as the scion to be used for the plant.~~

~~(2) Foundation Block: A selected tree may be planted in a foundation block when propagated with a scion from a registered tree in a foundation block or when propagated from a greenhouse -or screenhouse -grown scion that has passed the short-term inspection~~

and testing procedures required in Section 3003 and has completed or is under the cachexia-xyloporosis index. The tree may be registered when inspection and testing procedures prescribed in Section 3003 have been completed with satisfactory results and when the tree has produced sufficient fruit to give acceptable evidence that it is not off-type. A selected tree found to be ineligible for registration shall be removed from a foundation block.

(3) Selected Trees: Any individual orchard, yard, or container seed or scion tree may be selected for inspection and indexing for registration under the terms of this article.

(4) Nursery Increase Block: Scions used to propagate the nursery stock in a nursery increase block shall be from registered trees. Within 18 months of propagation, scions may be taken from the block for use in growing certified nursery stock. Trees in a nursery increase block also may be certified.

(5) Certified Block: Scions used to propagate the nursery stock in a certified block for certification shall be from registered trees or from a nursery increase block.

Note: Authority cited: Sections 407 and 5823, Food and Agricultural Code.
Reference: Sections 5821 and 5822, Food and Agricultural Code.

Section 3003. Inspection and Testing Procedures.
Inspection and indexing procedures prescribed in this article may be made by the University of California, the United States Department of Agriculture, or the Department and shall be conducted in an approved manner at times determined as suitable by the Department. In the indexing procedures required in this section, the Department may approve the substitution of other indicator plants, if equally suitable, or may approve indexing on a fewer number of indicator plants, or may approve other procedures for testing for virus infection if determined equally suitable.

Additional inspections or indexing other than provided in this section may be required by the Department if seasonal conditions or other factors tend to obscure virus symptoms or make adequate inspection impossible, or when virus infection is suspected, or when virus symptoms may be masked in a particular variety.

The Department shall assign an identification numbered tag to a selected seed or scion tree pending registration.

(a) Trees in a Foundation Block: The scion parent of any tree planted in a foundation block shall have been indexed for and not found to be infected with the specific viruses listed by using the specific indicator plants listed in the following table:

| Indicator Plant | Disease |
|---|---|
| Citrus excelsa..... | Tatter leaf & Tristeza |
| Dweet tangor..... | psorosis, concave gum |
| Etrog citron..... | Exocortis |
| Mexican lime..... | Tristeza, vein enation |

~~———————— seedling yellows, yellowvein~~
~~Sour orange..... seedling yellows~~
~~Sweet orange..... psorosis, concave gum~~
~~Rusk citrange..... citrange stunt~~
~~Parson's special mandarin.... cachexia-xyloporosis~~

~~Only the tristeza and exocortis indexes shall be required if the scion parent of the selected tree is a registered tree in a foundation block. Trees to be planted in a foundation block must be grown in an approved glasshouse or screenhouse.~~

~~Following planting in a foundation block, a tree shall be indexed for tristeza, vein enation, psorosis and exocortis viruses within the 12-month period before registration. In subsequent years after registration, tristeza indexing shall be repeated within one year prior to budwood collection from a registered tree. Each registered tree shall be reindexed for exocortis virus every third year and for psorosis virus every sixth year. Each foundation block tree shall receive one or more visual inspections each year. The fruit of bearing trees, except lemons, shall also be inspected each year after color break.~~

~~(b) Testing for virus or viroid infection of scion trees other than those in a foundation block planting shall be by use of specific methods or indicator plants for specific virus or virus-like diseases as stated below and in the following table:~~
~~Indicator Plant Disease~~
~~Mexican lime.... Tristeza~~
~~Sweet orange.... Psorosis, concave gum~~
~~Etrog citron.... Exocortis~~

~~For the production of increase and certified block plantings propagated from registered trees, indexing for tristeza virus is required each year in which approval for cutting budwood is requested; indexing for psorosis and exocortis is required every third year.~~

~~Each tree shall be given one visual inspection each year in which testing is requested.~~

~~(c) A selected seed tree and trees adjacent to it shall be given at least one visual inspection by the Department prior to registration. The selected seed tree shall be index-tested for the psorosis disease using the sweet orange indicator plant or other means of detection approved by the director. Information regarding such other means may be obtained from the Department's Pest Exclusion Unit.~~

~~(d) Order of Indexing: Indexing shall be made in the order in which applications are received and as indicator host plants are available.~~

~~(e) Registration Period: Registration for a scion tree is for a three-year period and six years for a seed source tree.~~
~~Registration may be continuous provided application for inspection and testing is filed with the Department prior to the expiration date of registration.~~

~~(f) Nursery Increase Block, Certified Block: One visual inspection shall be made each year of plants in a certified block. In a nursery increase block the inspection shall be made before buds are cut.~~

~~(g) Refusal or Cancellation of Registration or Certification: Registration or certification may be refused or canceled for any plants in part or all of a planting if:~~

~~(1) The requirements of this article have not been met.~~

~~(2) A selected or registered plant is found to be off-type.~~

~~(3) A tree is found to be within the range of possible root graft of another tree found to be virus-infected.~~

~~(4) The pest cleanliness requirements for nursery stock, Section 3060.2 of the nursery inspection regulations, have not been met.~~

~~(5) For any reason the identity of a plant becomes uncertain or has not been properly maintained.~~

~~(6) A registration number is misused or misrepresented.~~

~~(7) An accumulated percentage of more than one-half percent of the trees of the same variety on the same kind of rootstock are found virus-infected in a nursery increase block or more than two percent virus-infected or stubborn affected trees in a certified block. Either visual inspections or the results of indexing or both may be used as a basis for calculating the number of trees that may be infected.~~

~~(8) A tree is found to be in a high risk area for tristeza.~~

~~(9) A tree is found, by current procedures, to be infected with any of the virus or virus-like diseases listed in subsections (a) or (b).~~

~~(10) At the discretion of the Department, a seed tree determined to be or likely to be virus-infected with a virus other than psorosis may be reistered when it is growing in an area where such virus is known to be prevalent and is not being subjected to eradication or control by the Department.~~

~~Note: Authority cited: Sections 407 and 5823, Food and Agricultural Code. Reference: Sections 5821 and 5822, Food and Agricultural Code.~~

~~Section 3004. Application and Fees.~~
~~(a) Application. The applicant shall furnish information requested and shall give consent to the Department to take plant materials from any planting for reinspection or indexing purposes. An application shall be submitted for the acceptance of any plant or planting and for subsequent inspections, approvals, registration or certification, and may be~~

~~refused unless made sufficiently in advance of time of planting to permit the Department to establish the origin of the stock, to determine the suitability of the location, and to supervise any treatment that may be required.~~

~~(b) Fees. Fees established in this article are payable in advance of the work to be done and are for the sole purpose of defraying expenses incurred in the inspection, indexing, approval, registration and certification procedures herein provided and are not to obtain any right or privilege.~~

~~Fees shall not be charged the University of California or the United States Department of Agriculture for registration or for the inspection and testing of trees providing there shall be no expense to the Department other than for observation of the inspection and indexing required in this article and for the keeping of records. When the procedures are conducted by the University of California or by the United States Department of Agriculture, they shall not be less than provided in this article and the Department shall be notified each year of the trees to be entered or continued in the program.~~

~~(1) Fees. The Department shall establish a schedule of fees for services provided in this article. The fee shall be based upon the approximate cost of the services rendered.~~

~~(2) Refunds. Fees paid for services that are not rendered shall be refunded to the applicant.~~

~~Note: Authority cited: Sections 407 and 5823, Food and Agricultural Code. Reference: Section 5822, Food and Agricultural Code.~~

# FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing adoption of a regulation is necessary for an immediate action to avoid serious harm to the public peace, health, safety or general welfare, within the meaning of Government Code Section 11342.545 and Public Resources Code Section 21080. The Secretary provided five working days advance notice to allow public comment, within the meaning of Government Code Section 11346.1(a)(3).

Description of Specific Facts Which Constitute the Emergency

Senate Bill 140 (SB 140), chaptered November 2, 2009, requires that the California Department of Food and Agriculture (Department) establish a Citrus Nursery Stock Pest Cleanliness Program (CNSPCP) to protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats. The bill also requires that anyone propagating citrus by any means must comply with all of the eligibility requirements and testing protocols issued by the secretary. Further the bill authorizes the department to adopt and enforce regulations to carry out the program and to issue orders establishing rates or prices to cover the department's costs for administration, testing, inspection and other services under the program. The bill declares that it is to take effect immediately as an urgency statute.

Adding to the urgency of establishing the CNSPCP is the presence of the Asian citrus psyllid (ACP), *Diaphorina citri*, in California, the presence of both ACP and Huanglongbing (HLB) in Mexico, and the fact that in July of 2009 ACP larvae on an intercepted plant shipment tested positive for HLB.

The first find of ACP in California was in San Diego County on August 27, 2008. That and subsequent finds have led to the establishment of quarantines in Imperial, Los Angeles, Orange, Riverside and San Diego counties. Currently, 15,937 square miles of the State are under

quarantine for this pest. By itself, ACP causes only minor cosmetic damage to citrus trees. However, when it becomes infected with HLB, it becomes a carrier for the disease and can transmit the HLB-associated bacteria from the fourth nymphal instar through the adult stage with a latency period as short as one day or as long as 25 days.

Huanglongbing, first identified in China in 1919, is considered to be the most devastating of all citrus diseases. Once infected, there is no cure for HLB infected citrus trees, which decline and die within a few years. Additionally, the fruit produced by infected trees is not suitable for either the fresh market or juice processing due to the significant increase in acidity and bitter taste.

As late as 2007, HLB was known to exist only in Asia, Africa, Brazil (first identified in 2004, now affects 218 municipalities), the Indian subcontinent, the Saudi Arabian Peninsula and in the US, Florida, where it was first identified in 2005. Since then HLB has been found throughout the state of Florida and has also been identified in Louisiana (2008), South Carolina (2009), and the territory of Puerto Rico. Of most concern to the California citrus industry is the presence of both the ACP and HLB in Mexico. HLB was first identified in Mexico on June 26, 2009 on the Yucatan Peninsula. In December 2009, HLB was found in the states of Jalisco and Nayarit, just 1000 miles south of California.

The probability is high that a private citizen, tourist or immigrant will introduce the HLB-associated bacterium into California through the inadvertent movement of plant material including fruit from their homeland or areas visited to their backyard in a residential area. One possible explanation for the Florida situation is that numerous backyard citrus trees had been infected with HLB but in the absence of a vector, it went unnoticed. Once the ACP became established, it moved the HLB-associated bacteria from backyards into commercial groves. The movement of both HLB-associated bacteria and the ACP appear to have been accelerated through the movement of citrus plants through retail nurseries and garden centers. HLB has a latency

period of several years in infected trees, meaning the disease could be present and be spread for years before it is first detected.

California is the number one economic citrus state in the nation, with the USDA putting the value of California citrus at $1,131,851,000 (Federal Register Vol. 71, No.83; published May 1, 2006; pg 25487). A 2002 report by the Arizona State University School of Business indicates that there is at least $825.6 million of direct economic output and another $1.6 billion when all upstream suppliers and downstream retailers are included. This represents over 25,000 direct and indirect employees. To protect this source of revenue, California must do everything possible to protect the citrus industry from both HLB-associated pathogens and ACP.

The California citrus industry has taken a great deal of responsibility in preparing for the introduction and establishment of HLB-associated bacteria and psyllid vectors. Funding has been allocated towards research on easy, early (i.e., pre-clinical) detection methods (i.e., one primer set to detect all strains rather than primer sets specific for each known strain; host systemic responses) and the identification of HLB-associated bacterial strains, and vector relationships. Industry leaders (research and marketing boards) are involved in procuring federal funds for national research programs in the areas of host plant resistance, etiological agents and variants of HLB, specific native and exotic natural enemies of the insect vectors, and pesticide efficacy and new chemistries.

Commercial citrus fruit producers appealed successfully to the legislature to establish a California Citrus Pest and Disease Prevention Committee and to adopt an assessment on sales of citrus fruit. The Committee is to oversee the expenditure of this assessment to develop, subject to the approval of the secretary, a statewide citrus specific pest and disease work plan that includes informational programs to educate and train residential owners of citrus fruit, local communities, groups, and individuals on the prevention of pests, and diseases and their vectors, specific to citrus and programs for surveying, detecting, analyzing, and treating citrus pests and diseases.

Although California has had a voluntary citrus nursery stock disease testing program in place since 1962, citrus nursery stock producers were moving towards adopting a mandatory citrus-disease testing program prior to the first finds of ACP in California because they recognized that a clean nursery stock program is the foundation of a robust fruit production industry. Realizing that Florida was at a loss of ample supplies of HLB-free citrus stock when the pathogen was detected in 2005, they laid plans for expanding the screenhouse facility at the UC Lindcove Research and Extension Center that houses the industry's pathogen-free budwood source to allow for the protection of additional varieties. Additionally, citrus nursery stock producers held a series of meetings amongst themselves to develop a mandatory program. Following these meetings, they approached Senator Corbett, requesting that she author a bill to provide for a mandatory citrus-disease testing program. Senator Corbett introduced SB 140 on February 2, 2009. After the bill was introduced, the Department scheduled three meetings with citrus nursery stock producers and commercial fruit producers to discuss elements to be included in the proposed disease testing program. The first meeting was held in San Marcos, San Diego County on April 23, 2009. The second meeting was held in Tulare on May 12, 2009. At these two meetings, Department staff discussed the current citrus nursery disease testing program and received input from the industry and scientists on diseases, testing methods and frequency of testing to be included in the new program. A summary meeting was held on the second day of an ACP workshop in Riverside on June 11 and 12, 2009. Day one of the workshop consisted of presentations by the following:

1. FundeCitrus (a research institute funded by Brazilian farmers and the juice industry) staff describing the devastating impact of HLB in Brazil. HLB was present in one grove in 30 in 2004 but spread to one in five by 2008. FundeCitrus and the citrus industry lobbied successfully for a federal law which, since 2005, makes it an offense to leave a HLB-infected orange tree planted once laboratory tests have diagnosed the disease. Subsequent data showed less than one percent of trees were infected.

2. AVASA (the national certification program in Spain) staff describing the Spanish citrus certification program which, since 1996, has required 100 percent of citrus propagative source materials to be produced under screen.

3. A Florida citrus nurseryman describing the impact of ACP, HLB and citrus canker on the Florida citrus industry and resulting regulations. Two counties were known to be infected with HLB in 2005. By 2008, HLB had been identified in 32 counties. Florida hopes to manage HLB by a three pronged approach: starting with disease-free nursery trees (all citrus nursery stock and the propagative sources of the stock must be maintained in insect-resistant structures), scouting for and removing infected trees and controlling the ACP.

4. A description by USDA staff of the Citrus Health Response Plan, and

5. Presentations by construction industry and banking representatives regarding greenhouse/screenhouse design, construction costs and financing options. It was noted that nurseries must obtain building permits and financing prior to initiating construction of protective structures – a process that can take several months to a year.

The Department's summary of the proposed program was scheduled for the second day of the workshop. Originally, Department staff had developed a two-pronged approach. One approach would have allowed propagative source trees to be maintained in the field and resulted in common nursery stock. The second method would have required that all propagative source trees, except seed trees, be maintained inside insect-resistant screenhouses and resulted in certified nursery stock. However, based on the information presented by representatives from other areas already impacted by HLB, staff revised the proposal to require all mother trees be maintained in insect-resistant structures beginning January 1, 2012 and the same for all increase trees beginning January 1, 2013. These dates were chosen to both provide for the protection of citrus propagative sources as soon as feasible and to allow nurserymen adequate time for the process of constructing the required structures. Because nurseries must obtain building permits and financing prior to initiating construction, it may take up to a year before construction can commence. The proposals regarding insect-resistant structures met with no opposition at the

meeting. The remainder of the discussion centered on performance standards for protective structures, disease tests that would be included in the new program and testing frequency.

During the summer of 2009 Department staff began drafting proposed regulations under the assumption that SB 140 would take affect without substantial alteration. However, the bill was significantly amended prior to passage, necessitating discussions both internally with Departmental legal staff and externally with the author of the bill to determine the exact scope and authority of the bill.

Section 3701Definitions

The purpose of Section 3701 is to ensure that relevant terms are defined and can be clearly understood by those persons directly affected by them, as provided by Food and Agricultural Code (FAC) Section 6941(c)(4).

Section 3701.1 General Provisions

FAC Section 6940 states that the article only applies to *citrus nursery source propagative trees* while Section 6941(c)(1) states that the program shall require that any person who, by any method of propagation, produces any *citrus nursery stock* shall comply with all the program requirements as outlined in the article. The purpose of Section 3701.1 is to clarify that participation in and compliance with the program is mandatory for all producers (with the exception of the Citrus Clonal Protection Program) of citrus nursery stock propagative material. This material is generated from citrus nursery source propagative trees and is used in the production of citrus nursery stock.

FAC Section 6941(c)(5) requires participants to comply with the requirements of Section 3069 of Title 3 of the California Code of Regulations. Since the proposed mandatory program is replacing a voluntary program, this requirement is included in the Section 3701.1 to ensure that participants are aware that the requirement is being carried over to the mandatory program.

The purpose of Section 3701.1(d) is to list the administrative duties for which the Department is responsible as provided in FAC Section 6941(a).

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary component of an effective nursery stock cleanliness program is a provision for dealing with material not meeting the requirements of the program. The purpose of Section 3701.1(b) is to ensure that producers of citrus nursery propagative material are aware that any propagative materials produced out of compliance with the program may be subject to destruction.

Section 3701.2 Program Responsibilities

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. In order to have an effective program, the roles of participants and the Department must be clearly defined. The purpose of Section 3701.2 is to establish the responsibilities of the program participants and the Department. The participant will be responsible for maintaining fairly exhaustive records for material in the program. It is necessary for the participants to maintain these records to enable trace back or trace forward in case a disease of concern is detected in either the source of the nursery stock propagative trees, the nursery stock propagative trees themselves or in the propagative materials or nursery stock produced from them. Some of these recordkeeping requirements currently exist in Section 3407, Citrus Tristeza Virus Interior Quarantine. The Department is filing an amendment to repeal the duplicative portions of Section 3407 concurrently with the filing for adoption of these regulations.

Section 3701.3 Eligibility Requirements

FAC Section 6941(c)(1) requires that a person producing citrus nursery stock comply with all eligibility requirements but does not specify what those requirements are. The purpose of Section 3701.3 is to establish eligibility requirements for the sources of the trees which will be entered in

the program, to allow for topworking using registered materials, to provide for the registration of trees infected with the HSVd citrus viroid IIa (CVd-IIA, non-cachexia variant) and to establish the length of time during which field-grown and non field-grown increase trees may be used as sources of propagative material without further testing.

Section 3701.4 Planting Location and Maintenance Requirements

FAC Section 6941(a) provides that the Department will develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and Section 6941(c)(3) states that the program shall specify phase-in periods for various requirements. Because of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures. The purpose of Section 3701.4 is to establish protective measures regarding planting and maintenance requirements for trees in the program, including that scion mother trees must be located in insect-resistant structures effective January 1, 2012 and that seed and increase trees must meet the same requirement effective January 1, 2013. During the scoping meetings held in 2009, the Department had proposed that nurseries could continue to maintain field-grown seed trees since it was believed that none of the citrus diseases of concern were seed transmitted. However, on April 6, 2010, the United States Department of Agriculture published notice in the Federal Register that they are amending the regulations governing the importation of propagative seed of several Rutaceae genera from countries where Huanglongbing was present because scientific evidence indicates that HLB may be seed transmitted. Due to this decision, the proposed regulations now stipulate that seed trees will also have to be grown in insect resistant structures. Since the industry will have shorter notice of this impending rule than for the other dates agreed upon at the scoping meetings, the effective date is one year later than for scion source trees.

Producing plants in insect-resistant structures is only one part of a pest-cleanliness program. The structure must also be maintained and utilized properly. Recognizing that nurseries operate in many different ways, the Department developed a performance standard for properly operating and maintaining an insect-resistant structure and will rely on the participant nurseries to develop their own methods for meeting this standard. The adoption of Section 3701.4 will establish that participants maintaining insect-resistant structures will be required to sign a compliance agreement that includes a plan for how they will meet the maintenance and utilization performance standard outlined in the section.

Section 3701.5 Insect-Resistant Structures Performance Standard

FAC Section 6941(a) requires the Department to develop a program that will protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats. Because of the twin threats of ACP and HLB, the Department has determined that citrus nursery source propagative trees will be best protected if grown in insect-resistant structures and has developed a performance standard for the construction such a structure which will allow the participant nurseries to construct a structure that meets both a protective standard and their operating needs. The purpose of the adoption of Section 3701.5 is to establish the performance standard that insect-resistant structures must meet.

Section 3701.6 Inspection and Testing Procedures

The purpose of sub-sections 3701.6(a) and (b) is to list the entities designated to perform disease and pathogen diagnostic testing and analysis and to provide for their designation as authorized by FAC Section 6943(a).

The purpose of the adoption of sub-sections 3701.6(c) and (d) is to establish the approved testing methods, frequency of testing and the diseases for which testing will be required as authorized in FAC Sections 6940(c) and 6941(c)(2).

The purpose of the adoption of 3701.6(g) is to establish the frequency and types of inspections to which a participant will be subject as authorized by FAC Section 6941(c)(2).

Section 3701.7 Refusal, Suspension or Cancellation of Registration

FAC Section 6945 states that the article shall be construed liberally to effectuate the Legislature's intent that an effective citrus nursery stock pest cleanliness program be established. A necessary component of an effective nursery stock cleanliness program is a provision for dealing with material not meeting the requirements of the program. The purpose of the adoption of Section 3701.7 is to establish the criteria used as the basis for suspension or cancellation of registration. The criteria for suspension versus cancellation are very similar and the final decision would be based on the severity of the disease threat and/or infraction. Factors to consider in making the final decision could include, disease detected inside the structure (How many trees are infected, with what type of disease and how long since previously tested?), insect detection(s) inside the structure (How many insects and are the insects vectors of citrus diseases?), or a breach in the structure (How large and how long was it present before detection and repair?). There are enough variables that developing a strict set of rules for suspension vs. cancellation is virtually impossible. This section also sets time limits for the removal of trees no longer eligible to be in the program. Trees that are ineligible due to reasons other than testing positive for a disease of concern must be removed within one month of the participant receiving notification from the Department. However, trees testing positive for any of the diseases of concern must be removed within 48 hours of the participant being notified by the Department since they pose a threat of infection to all other trees in the same structure.

Section 3701.8 Application and Fees

FAC 6941(c)(1) requires that participants comply with all eligibility requirements issued by the secretary, one of which will be that each participant must complete and submit an annual application to participate in the program. The purpose of the adoption of 3701.8(a) is to ensure that participants are aware of the kinds of information they will be required to submit to the Department annually.

The purpose of the adoption of 3701.8(b) is to establish the fees for which participants are responsible and that the fees are to be used solely to reimburse the Department for the costs of administering the program as authorized by FAC 6944. The regulations also stipulate that participants will be subject to an additional fee equal to the amount charged by the laboratory selected to do the analyses. Since laboratory fees may vary from year to year or from facility to facility, this provision is necessary to allow the Department flexibility in choosing which of the approved laboratories will be selected without having to continually amend the regulations.

Sections 3000-3006 Registration and Certification of Citrus Trees

The effect of the repeal of Sections 3000-3006 will be to rescind this voluntary program as it is duplicative of and will be replaced by the adoption of Sections 3701 et. seq.

Section 3407, Citrus Tristeza Virus Interior Quarantine

The effect of the amendment of Section 3407 is to rescind those requirements that will be duplicative once Sections 3701 – 3701.8 take affect. Specifically, propagative material from source trees maintained inside insect-resistant structures will be exempt from the moving permits requirements in this section.

The effect of the adoption of these regulations is to provide authority for the State to establish and administer a Citrus Nursery Stock Pest Cleanliness Program in order to provide a source of

protected, disease-tested citrus nursery stock to the citrus industry. Since it is necessary to not only rapidly establish a program to protect the health of citrus propagative sources, given the presence of ACP and the eminent threat of Huanglongbing, but also to provide sufficient notice to citrus nursery operators of the provisions of the program, it is necessary to adopt this regulation as an emergency action.

The Department has also relied upon the following documents for this proposed emergency action:

Federal Register, Vol. 75, no. 65, April 6, 2010.

National Quarantine Citrus Greening and Asian Citrus Psyllid, dated December 7, 2009, United States Department of Agriculture.

Pest and Damage Record #1557491, dated July 13, 2009, California Department of Food and Agriculture.

Agenda for Asian Citrus Psyllid Workshop June 11-12, 2009, and its attachments.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting May 12, 2009 and its attachments.

Agenda for Citrus Nursery Stock Pest Cleanliness Program scoping meeting April 23, 2009 and its attachments.

Letter from Susan McCarthy to California Citrus Nurseries and Commercial Citrus Producers, dated April 1, 2009.

Citrus Health Response Plan State of Florida, 2006-2007.

Informative Digest

FAC Sections 6940-6946 provides that the Department is obligated to develop and establish a mandatory Citrus Nursery Stock Pest Cleanliness Program to protect citrus nursery source propagative trees from harmful diseases, pests, and other risks and threats and that the program shall be administered by the Secretary.

Section 3701 et. seq. Citrus Nursery Stock Pest Cleanliness Program

The adoption of Section 3701 et. seq. will establish that participation in the Citrus Nursery Stock Pest Cleanliness Program is mandatory for any person (with the exception of the Citrus Clonal Protection Program) who by any method of propagation, produces any citrus nursery stock; the diseases for which testing is required and the test methods to be used, a list of laboratories approved for performing the tests, frequency of such testing, requirements and time frames for growing registered mother and increase trees in protective structures, a performance standard for such structures, a fee schedule for participants, record-keeping requirements for the Department and participants, elements of a required application form and compliance agreement between nurseries and the Department, provisions for suspending or cancelling the registration status of citrus trees and provisions for mandatory destruction of trees and/or propagative materials for which registration has been cancelled.

FAC Sections 5821-5823 provide for a voluntary citrus nursery stock registration and certification program that has similar, in some cases identical, requirements for disease testing and tree registration.

Sections 3000 et. seq., Registration and Certification of Citrus Trees

Concurrent with the request for adoption of Section 3701 et. seq., the Department is proposing to repeal Sections 3000-3006, Registration and Certification of Citrus Trees.

FAC Sections 5301, 5302 and 5322 provide for a mandatory citrus tristeza virus interior quarantine. The quarantine specifies moving permit requirements that will no longer be necessary for certain types of propagative materials once the proposed regulations are in effect.

Section 3701, Citrus Tristeza Virus Interior Quarantine

Concurrent with the request for adoption of Section 3701 et. seq., the Department is proposing to amend Section 3407, Citrus Tristeza Virus Interior Quarantine to exempt certain propagative materials from the requirements for a moving permit.

There are no comparable federal regulations or statutes.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that Section 3701 et. seq. does not impose a mandate on local agencies or school districts.

Cost Estimate

The Department has also determined that the regulation will involve no additional costs or savings to any state agency because initial funds for state costs are already appropriated, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable savings to local agencies or costs or savings to school districts under Section 17561 of the Government Code and no costs or savings in federal funding to the State.